AN EVALUATION OF THE CAREER DEVELOPMENT PILOT PROGRAM APPEALS PROCESS

Submitted to:

THE EDUCATION SUBCOMMITTEE

OF THE JOINT LEGISLATIVE COMMISSION ON

GOVERNMENT OPERATIONS

North Carolina General Assembly

State Legislative Building

Raleigh, NC 27611

Submitted by:

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July 5, 1988

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July 5, 1988

The Education Subcommittee of the
Joint Legislative Commission on
Government Operations
North Carolina General Assembly
State Legislative Building
Raleigh, NC 27611

Gentlemen:

It is a pleasure to submit this report of my evaluation of the CDP appeals process. I hope that I have responded to your charge satisfactorily and that my findings and recommendations will prove useful to you in the months ahead.

You can expect some redundancy as I have restated some ideas to make each of the major sections stand on its own. Hopefully this will facilitate your reading, even though it lengthens the report.

I appreciate the courtesies extended to me in the conduct of this study by board members, attorneys, and educators in several pilot districts which I visited and by members of the Department of Public Instruction. They could not have been more cooperative and helpful. The arrangements for my visits which Joan Rose, contract administrator, worked out were also most helpful and appreciated.

Sincerely yours,

Richard M. Brandt

RMB:bks

EXECUTIVE SUMMARY

The primary conclusion of this study of the pilot program appeals process is that it works well at the initial peer panel level, but it has serious shortcomings at the board hearing stage. The appeals procedure adopted by the State Board of Education in May, 1987, limits the panel review to (a) whether proper procedures are followed in the evaluation of an educator and (b) whether the recommendation is arbitrary or capricious.

The statute establishing the pilot program, GS115C-363, prescribes the composition of a three-member panel of trained evaluators so that both parties have equal influence in the selection process. Hearings are structured so both parties have equal opportunity to present their cases. Panelists review the performance appraisal information used to make the summative ratings and determine if it is reasonably consistent with those ratings and gathered according to the prescribed procedures. This review provides a second opinion by a panel of professionals of the same judgment-call based on the same data as was used in the original evaluation. Supposedly the panel as a whole is neutral because both parties were equally involved in the choice of panel members.

There is some numerical imbalance due to multiple evaluators. This imbalance does not impair the

fundamental fairness because both sides are guaranteed equal time for presentation. It should be recognized, however, that it can create a feeling of isolation and intimidation for evaluatees.

Whereas the process has worked quite well at the initial peer panel stage and the number of cases being appealed to school boards has not been great so far, those that have reached the boards have not gone well. Potential problems lie ahead that, if not resolved, threaten to undermine the performance appraisal system and career development program.

The root of the difficulty is the lack of clear guidelines for school board action and training of those who participate in the hearings. The primary specification for these hearings so far is that each party is entitled to counsel. No limits are set on what evidence can be considered, no specifications of the criteria on which judgments are to be made, and little direction provided on the scope of the hearing. Although the absolute numbers are not great, almost half of the panel review decisions have been overturned. Reasons for some of these decisions have little to do with the data provided by the carefully developed appraisal system. Too often, other considerations, such as the perceived political influence of the parties involved, were the primary factors.

The major recommendations of this study, therefore, are that (a) board members who are involved in the appeals hearing process be well trained in the PAS and the appeals process and (b) the board review be focused on the same data and guidelines as the earlier peer panel review.

To allow the board complete discretion to establish its own guidelines and procedures is to undermine an important, carefully developed system of performance appraisal. Boards of education represent the public interest and, as such, they ordinarily should have great latitude. In this case, however, they should either let the professionals make the judgment; or, better yet, take the time and effort to be trained in the appeals process, including the TPAI, and double check the quality of the summative judgments.

The system is in place. The number of complaints is modest at this point. Teachers need a fair grievance procedure against potential arbitrariness. This system is structurally sound, I believe, and with the recommended improvements should provide that safeguard.

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INTRODUCTION

This report describes a review of the appeals process for participants in the North Carolina career development pilot program, along with findings and recommendations.

The charge by the Education Subcommittee of the Joint Legislative Commission on Government Operations was to:

- evaluate the process by which a person aggrieved by the teacher or principal performance appraisals may appeal
- determine the fairness of the process for all parties involved
- determine the extent to which the local boards, in reviewing the performance appraisals, base their decisions on information obtained through the Teacher Performance Appraisal Instrument (TPAI) and the Principal Performance Appraisal Instrument (PPAI)
- determine whether board members have sufficient training to review fairly and completely the performance appraisals

The study was conducted in June, 1988, by visiting and interviewing people in several pilot districts: Alexander, Buncombe, Burlington, Haywood, and New Hanover. In all 58 persons were interviewed, mostly in person, a few by phone. They were distributed as follows according to their roles in the profession and/or the appeals process:

3 school superintendents

4 associate or assistant superintendents

6 school board members (including the executive director of NCSBA)

6 lawyers (including school attorneys, NCAE attorneys and an assistant attorney general)

2 coordinators of career development pilot programs

6 observer evaluators

8 teacher appellants

5 principals

15 panel members

3 others (DPI personnel director, school law experts)

Approximately half of the interviews were conducted in small groups, the remainder with individuals. The interviews with eight teachers who appealed were all conducted individually. Upon my request, they were selected so as to provide a balance between those who were successful and those who were unsuccessful with their appeals. They were also divided between those who experienced only the panel review and those who also had a school board hearing. Principals and panel members interviewed were not necessarily those involved with the particular teacher appellants interviewed. I was interested in soliciting a range of opinion from various segments of the educational community, rather than in investigating particular cases.

In addition to the interviews, I studied a number of documents and relevant school laws including the following:

- DPI appeals training materials: video-tape for training panelists, Appeals Procedures adopted by

the NC Board of Education, and other relevant materials distributed in May, 1988

- Local district appeals process descriptive materials

- Sample reports of appeals panels

- Relevant statutes and case notes:
  - 115C-45 Judicial functions of the board
  - 115C-302 Salary and vacation
  - 115C-305 Appeals to board of education and to superior court
  - 115C-325 System of employment for public school teachers
  - 115C-326 Performance standards and criteria for professional employees
  - 115C-363 Career Development Pilot Program

Needless to say, a sound evaluation of the appeals process cannot occur without a thorough understanding of the career development pilot program and the performance appraisal system on which it is based. The judgments presented in this study of the appeals process, therefore, are derived in part from the understandings and sentiments I and my colleagues expressed in our recent report on the performance appraisal instruments.*

*Richard M. Brandt (Chair), Daniel L. Duke, Russell L. French, and Edward F. Iwanicki, A Review with Recommendations of the North Carolina Teacher Performance Appraisal Instrument. Report submitted to the Education Committee of the Joint Commission on Governmental Operations, North Carolina General Assembly, May 21, 1988.

THE NATURE OF APPEALS

The career ladder establishes levels of differentiation that reflect "individual teachers' and administrators' initiative and desire to strengthen their professional abilities and their success in doing so."* The plan permits educators to be promoted to advanced status and pay if they meet specified performance criteria. It also provides for reclassification of individuals from higher to lower status for failure to maintain acceptable performance standards.

The appeals process was prescribed by the General Assembly for candidates who were not recommended for higher status and for those persons who were recommended for reclassification to a lower status. It allows such individuals to request a review of the recommendation by a panel of three trained evaluators and, if not satisfied with the review, to request a hearing before the local school board.

Pilot districts developed their own procedures for use during the 1985-86 school year. In order to achieve relative uniformity across the districts, however, a subcommittee of the State Steering Committee was assigned the task in fall, 1986, of designing a procedure that

*North Carolina Career Development Program Pilot: Appeals Panel Training. Raleigh: Department of Public Instruction, May, 1988, p. 5).

could be implemented statewide. The State Board of Education adopted an appeals procedure in May, 1987, which became effective immediately.

This appeals procedure limits the review conducted by the appeals panel to determining (a) whether proper procedures were followed in the evaluation of a teacher and (b) whether the recommendation to deny career status was arbitrary or capricious.

FINDINGS

Number of Appeals and Results

According to a Department of Public Instruction memorandum dated January 11, 1988, a total of 65 appeals were made to the panels in 1987,* approximately 1 percent of all evaluation cases. Of those who in years of teaching in their school district were eligible for career status II (CSII), the 65 appeals represent an estimated 7 percent of those who did not achieve it. More than two-thirds of the appeals were from three of the larger districts: Buncombe 12, Burke 12 and New Hanover 22. Haywood County with 7 appeals was the only other district with more than 3 cases. Five districts had no appeals.

Approximately four times as many appeals resulted in the original decision being upheld by the panel as those

*Information regarding appeals cases in Charlotte Mecklenburg were not available and not included in these numbers.

that were overturned (51 to 13). Almost half of those upheld were then appealed to the board. Of the 24 appealed to the board, 12 were overturned.

Attachments to the January 11 memorandum reported appeals procedures training activities in the pilot units, a survey of problems and recommendations cited from each of them, and a recommendation from the Appeals Subcommittee (November 30, 1987) to the State Steering Committee that the procedures not be changed but that additional training and training materials were needed for board members and others involved in conducting appeals.

I generally concur with the conclusion of the Subcommittee that the small number of appeals overall, the low rate of overturned decisions at the panel stage, and the lack of widely endorsed suggestions for change are indicative of a sound process. This judgment seems particularly reasonable considering the fact that the appeals procedures were being tested for the first time, when faults might be most expected and training activities were still minimal.

Nevertheless, problems with the process were apparent in several districts, and the number of board reversals in particular was disturbing given the potentially negative effect of such decisions on the operation of the performance appraisal system and the career ladder. A detailed review of the whole process seemed needed to

determine what improvements could be made to ensure fairness to all parties and a smoothly functioning appeals process that would not damage the effectiveness of the performance appraisal system.

Grounds for Appeals

State guidelines indicate that the grounds for appeals can be (a) procedural violations during the performance appraisal process, (b) arbitrary or capricious summative ratings on the TPAI, or both. The person making the appeal states the grounds for it. Of the 65 appeals brought to the panel stage in 1987, only 8 were for procedural violations alone. A total of 40 were solely for arbitrary or capricious ratings, and 16 more were appealed on both grounds.

In conducting reviews for possible procedural violations, panels examined the records to ensure that (a) the minimum number of four observations were made, two by the principal or his designee and two by the observer evaluator; (b) at least one observation was announced and one unannounced; (c) formal observations were followed by post-conferences; (d) formal observations lasted an entire instructional period; (e) formative observation notes (FODIs) were recorded by observers and used to complete formative observation data analyses (FODAs); and (f) summative performance appraisal conferences were conducted.

Complaints of arbitrary or capricious ratings were reviewed by examining the evidence to see if it was directly rated to the employee's performance and/or summative appraisal. FODAs, FODIs, and the completed performance appraisal instrument provided key items of evidence, along with such others as informal observation data if in written form, memoranda or letters that were shared at or prior to the summative evaluation, school handbooks defining rules and regulations, evaluatee's written rebuttal, the letter of appeals, and whatever either party said that related directly to the employee's performance and/or summative appraisal. Only data collected during the current year and shared with the employee prior to and/or at the time of the summative evaluation were allowable. Panels typically reviewed data related directly to the specific functions in question to judge whether or not they were consistent with the ratings given. Their task was to determine whether a reasonable decision was made based on the evidence available or whether, instead, the ratings that led to a denial of career status were arbitrary or capricious. The panel's task was to examine the evaluation record and other relevant evidence and determine what the record showed. Panel members were to receive copies of FODAs and the TPAI a few days before the hearing in order to study them ahead of time. The hearing included the panel, the appellant,

and the person or persons whose decision was contested. All persons involved in the evaluation had a right to be at the hearing. Each party could have one person from the educational community accompany him, but this person was not permitted to speak. Local districts were encouraged to develop their own procedures and schedules for the hearing but within the rather specific guidelines established by the State Board of Education. In all fundamental ways, I found remarkable consistency from one district to another in the procedures followed at the panel stage. In one district, attorneys were allowed to accompany parties, for example, but not to participate in the proceedings.

One variation across and even within districts related to differences in how evaluators were assigned. In some places they were assigned to specific schools, and in other places they evaluated throughout the district. As a result, some teachers had only two evaluators during the year, the principal and an observer evaluator, while others had three, four, or more. Since all persons involved in the evaluation of an individual had a right to be at the hearing and might have been needed to answer panel questions, some teachers felt intimidated by the number of people at the hearing who were party to the decision under protest. Even though panels were instructed to give each side the same time to present its

case, the psychological impact of the larger number of persons on the opposite side added extra stress.

To reduce stress in the future, several teachers suggested that observer evaluators and assistant principals be located in an adjacent room where they could be called for questioning about an observation if they were needed but not be directly present at the hearing. With the increasing use of consensus ratings on the part of all evaluators, however, such a practice would deprive persons who have a right to be present, since they participate as equal partners in the summative decision, to exercise that right. I am inclined to favor the inclusion of all persons who participate in an evaluation as the fairest practice even though some extra stress may result for the appellant. To alleviate stress somewhat, however, appellants ought to be well briefed about the appeals process and offered assistance by a neutral party in preparing for the hearing. In some districts the CDP coordinator has attempted to assume that role.

Training of Panel Members

In each district a pool of potential panel members is created from those who have received 24 hours of TPAI training and special training in the appeals process itself. In some districts, this pool consists of a relatively high percentage of all teachers and administrators. In others, it is a lower percent of

teachers with administrators and observer evaluators making up the rest of the pool.

Extreme differences were reported in the experience and ability of individuals to serve on appeals panels. Observer evaluators and principals undergo not only the training but gain a greater deal of practice in conducting evaluations, writing FODIs and FODAs. Many teachers, of course, have no other experience with the process than what the training program and their own evaluations have provided. Despite these background differences, however, it is important that appellants have a sufficient choice among teachers in the pool to feel they can truly select a peer. The Appeals Panel Training program and materials prepared by the Department of Public Instruction and released in May, 1988, should considerably enhance the readiness of panel pool members. Teachers need to feel they have been judged by peers on appropriate criteria. One teacher said he felt better about the whole career development program after going through the appeals process, even though he lost it; and he intends to try again for a CSII promotion next year.

Training of panelists on the TPAI and the appeals process is important for overcoming at least two other perceived concerns of appellants. One is a tendency of some administrators to dominate panels. The other is a perceived inconsistency between panels based on who is

most articulate. Training can serve to keep the focus on what is relevant and irrelevant evidence, what the evidence shows, and whether prescribed procedures are followed rather than on who is most authoritative or persuasive. It can serve to remind panelists that they have a two-fold responsibility: (a) "to protect the rights of the appellant" and (b) "to help ensure the quality of performance of their fellow educators."*

The Appeals Training program and materials recently developed should provide help in a number of ways. They specify very clearly the extent and purpose of the review and the two issues that can be appealed, i.e. evaluation procedures and the possibility of an arbitrary/capricious recommendation. They provide a checklist of the proper procedures to be followed and cite examples of what is and is not arbitrary or capricious. They explain the nature of evidence and provide clear examples of what is relevant and what is irrelevant. They review the nature of the task and procedures the panel should follow in conducting its hearing. They provide examples of the kind of report the panel should make to the local school board, which states not only the decision reached but the basis for that decision.

Board of Education Actions

In contrast to the carefully prescribed guidelines,

*Ibid., p. 8.

procedures, and training materials that have been developed and adopted for the conduct of panel hearings, almost nothing has been specified so far regarding how school boards are to conduct hearings and take final action. About all that has been decided statewide is that both parties can have access to counsel if they so desire.

Statutes 115C-45 and 115C-305, as well as longstanding traditions, establish a policy that all personnel actions can ultimately be appealed to the local school board for decision and action. The nature of school board hearings and actions was a subject of intense inquiry during my visits to the several pilot districts and my interviews with board members, attorneys, and superintendents in particular.

Even though only 38 cases were appealed to school boards last year and there were none at all in ten of the sixteen districts, considerable concern was expressed about them by many individuals. Almost half of the original decisions were not upheld.

Some board members indicated the hearings represented their most difficult moments since joining the board. They were uneasy about how to respond to personal calls they received regarding individuals involved in the hearings. They typically had not been trained on the TPAI and had no experience reviewing FODIs, FODAs, and teaching functions. They were uncertain about what other

information should be considered. I was told by school board members themselves, as well as others, that political pressures based on who the contestants were and their standing in the community and individual tendencies to support the administration at all costs or to back teachers regardless of the issues were often the decisive influences in board members' voting. In some instances, the board felt manipulated by the lawyers present, and the hearings dragged on for hours because information other than the current year's record of performance and evaluation was allowed to be discussed. Teacher appellants wanted to use whatever information could be mustered to support their case, whether or not it was obtained through the regular appraisal procedures. Teacher attorneys I talked with felt teachers deserve full representation of counsel and a broad definition of allowable evidence. Hearings too often are like a hostile court room rather than a setting for reasonable inquiry and review.

Two superintendents, in particular, expressed strong concerns about potential damage to the career development program. One suggested using an outside arbitrator in lieu of a board hearing.

> It's not right to allow the professional effort made over a ten-month period to be subject to overturning in a one-hour period by a political decision. The board hearing is equivalent to a job loss hearing and

it shouldn't be. It has the potential to destroy the career ladder. It has polarized the faculty and upset administrator-teacher relationships.

To the extent that school boards consider and use information in making their decisions other than that obtained through the prescribed performance appraisal system, I believe, they undermine the validity and effectiveness of that system. Evaluators would be less likely to rate teachers accurately who perform poorly but have high status or political influence. The evaluation process would lose credibility with teachers as well, if they see the board overturning decisions for apparent political reasons. The potential damage to the career development program is considerable if many cases are overturned by the board. It would basically mean that the carefully designed and installed performance appraisal system is not what counts but whom one knows and how much influence one can bring to bear on the board.

Is the appeals process fair for all parties involved?

The major purpose of the appeals process is to ensure fair treatment of educators who feel they have been evaluated improperly and, as a result, denied the career status and extra pay they deserve. They can appeal that decision to a panel of trained educators whom they and their evaluator choose on an equal basis. Both parties have the same time to present their case. The teacher is permitted to appeal if (a) he believes improper procedures were followed in evaluating him or if (b) the summative ratings he received were not consistent with the evidence and, therefore, arbitrary or capricious. The evaluator knows before the hearing is held what is being appealed. Evidence to be considered should bear directly on the employee's current year performance and/or summative appraisal. Only evidence that is gathered prior to or at the summative evaluation conference is considered relevant, so panel members will be examining the same data that presumably were used in making the ratings. Each party can have one person present from whom to seek private advice, but that person cannot speak in the hearing. Following the hearing, panel members deliberate in private in reaching a decision and are instructed not to discuss their proceedings with anyone. The report of the panel should state the reasons for the decision.

Copies go to both parties as well as to the superintendent and school board chairman. A minority report may be filed by a panel member. With all these safeguards and guidelines, the process would seem to be fair to all parties through the panel stage. More will be said later about the fairness of the process when the board hearing occurs.

In individual cases, of course, unfair or inconsistent treatment may still prevail. A teacher may receive a biased FODA, for example. He can file a rebuttal in disagreement, and two earlier recommendations of our TPAI review (providing teachers with FODIs before their post-observation conferences and allocating a specific place on the FODA for evaluatees' responses) should encourage such rebuttals when they are needed.

Complaints were made about scheduling hearings after school and late in the evenings when everyone was tired. Hearings can be quite stressful for all parties including panelists. In one or two instances, a teacher who was an appellant one day served as a panelist for another teacher the next day. I also heard complaints that a person who is put on warning for a year by a poor summative rating is not permitted to appeal that evaluation. This ruling seems fair to me, however, since no status change or loss of money has yet taken place. He would be able to appeal the following year if his evaluation does not improve and

he actually loses status and money. Program coordinators and other administrators responsible for administering the appeals process can reduce problems and stress by requiring panelists to be chosen from other schools than that of the evaluator and evaluatee, by being sensitive to potential scheduling conflicts, and by communicating well with all parties about how the hearing will be conducted. Obviously, the more people know about what to expect, the more smoothly hearings will run.

To what extent do local boards, in reviewing the performance appraisals, base their decisions on information obtained through the TPAI and the PPAI?

As discussed earlier, board members and others present at the board hearings indicated that decisions in a number of cases were based, at least in part, on other information than what was obtained through the TPAI and PPAI. Reports of teachers' performances in other years, testimonial commentary by former students and parents, students scores on standardized tests without pre- and post-teaching data to permit valid comparisons, and a wide assortment of other information was presented at the board reviews, in considerable contrast to what the peer panels had examined. FODIs, FODAs and TPAI data were considered as well, but without board members having the same training or experience in examining them as the peer panelists. There is no question in my mind that some board members and some local boards took other information

into account in making their final judgments.

I noted considerable difference in board member attitudes toward the process in two districts. In one, they would have to see blatant, clear evidence in the TPAI data that evaluation procedures were violated or judgments arbitrary before they would overrule a peer review decision. In the other, several board members felt it was particularly important to support teachers, given the difficulty of their roles. They also believed the TPAI does not include all the indicators of good teaching. Needless to say, considerable differences can be noted in the board decisions of these districts.

To what extent have members of local school boards had sufficient training to review fairly and completely the performance appraisals?

According to the January 11 memorandum, only four or five districts reported any orientation or training for the appeals process, and even here it was undoubtedly superficial and brief. Some board members I talked with indicated some familiarity with the TPAI functions but admitted difficulty, when they were preparing for the hearings, in reviewing FODAs and seeing how data there related to TPAI ratings. According to one CDP coordinator, a board member accepted an invitation to be present for a post-conference following an observation where a FODA was discussed, and found it to be one of the

most informative experiences he had ever had as a board member. This reaction obviously illustrates the need for direct experience with the performance appraisal system.

The North Carolina School Boards Association sponsored a training session for some of its members. The presentation was made by a consultant from the Midwest, however, and was not related directly to the TPAI. Not only have most school board members not received training on the appeals process, but they undoubtedly lack the detailed knowledge of the TPAI and the analysis procedures necessary to review performance appraisals fairly and well.

How well does the process work by which a person aggrieved by the teacher or principal performance appraisals may appeal and what can be done to improve that process?

In summary of all that has been described or assessed so far in this report, let me state first that an appeals process has been developed and tested in several pilot districts which seems to be working. Although the panel hearings may be stressful for the parties involved and even the panelists, teachers at least have an opportunity to get a second judgment on whether they were evaluated properly and judged fairly. In approximately one-fifth of the cases, their appeal was successful and the denial of career status rescinded. Even some of those who were unsuccessful felt better about the performance appraisal system and career ladder because they went through the

appeals process.

The appeals process is an essential component of the career development program. It protects the rights of individuals against biased and arbitrary judgment and unfair treatment in the assessment of their performance. Such protection should strengthen the validity of the PAS as well and enhance its effectiveness in improving instruction.

The appeals process has already improved the quality of summative ratings and feedback to teachers. Several principals commented that as a result of having their statements challenged during appeals hearings they have been more careful this year in the phrases they use on FODAs and in post-observation conferences to convey strengths and weaknesses accurately so teachers will know how they are perceived as the year goes along and not be surprised by the summative rating. In one district, a new procedure was started this year of sending teachers a midyear report after two observations to inform them in general terms how they were doing so they would receive ample warning of areas that needed strengthening. In most pilot districts, evaluators attempted to generate a list of key terms that could be used consistently to refer in precise ways to the assessed quality of teaching actions. Such efforts should not only improve the interreliability of ratings but also increase the accuracy of feedback to

teachers on how their performance is perceived.

Not all of the effects of the appeals process so far, however, have been positive. For some principals, the board hearing represented the first time their judgment had been called into question in a public or semipublic forum. Questioning by an attorney did not lighten their task. To the extent that inconsistencies showed up in their written and oral statements, they tended to look foolish. School board members, too, reported being uneasy and feeling they were in an adversial situation with the administration.

If school boards reverse very many personnel decisions of this sort, especially in ways contrary to what the PAS indicates, the entire effort to conduct sound performance assessment will be threatened. Principals will be less willing to evaluate rigorously. Teachers will be reinforced for complaining loudly about anything less than high ratings. And whatever fairness and objectivity the performance appraisal system brings to the evaluation process will be lost.

Inconsistencies still exist in the rigor, objectivity, and validity of performance assessment--from one school to another and one school district to another. Some districts average almost one scale-step higher than other districts. Yet, by other measures, such as student achievement scores and dropout or absentee rates, there is

no indication of better overall teaching in those districts with the highest ratings. To the contrary, I propose, those districts doing the best job of evaluating teaching may have the lowest average teacher performance ratings and the highest success rate on student performance indicators. I believe I visited such a district. The percentage of teachers eligible, in terms of years of teaching experience in the district, who were actually promoted to CSII level was only 57 compared to as high as 87 in other pilot districts. It seems to me that the closer a district is to promoting all eligible teachers to the higher rank the greater one's claim to a right to be promoted. A high percentage (e.g. 87%) may provide a strong case that one has been discriminated against for personal bias reasons and weaken the claim that promotion is based on a sound measure of teaching performance.

Differences are apparent also between schools within districts. In some schools, no teachers eligible and applying for promotion in 1986-87 received ratings low enough to deny it. In other schools, up to a third of those eligible did not achieve the CSII level. Principals from the latter schools had to defend their summative ratings in appeals hearings at considerable time and effort. Principals with no teachers appearing because none were denied promotion had a much easier time. Some

principals, on principle, denied they had any inferior experienced teachers and assigned no ratings less than five on a six-point scale. In our earlier review of the TPAI and PPAI system, I and my colleagues recommended that the teacher evaluation practices of principals be monitored by having them justify higher or lower average ratings than what other principals give. Their own evaluation as instructional leaders ought to depend in part on how well they conduct the teacher performance assessment. Those who do a good job of assessing teacher performance ought to be rewarded for it. Those who do a poor job or opt out by assigning nothing but 5 and 6 ratings ought to be questioned about it and, if they cannot justify their ratings, be downgraded themselves. Performance assessment is a demanding responsibility and principals should be judged in part on how well they do it. It is most important that those in the career development program be evaluated fairly but rigorously.

Several recent developments should improve the quality of performance evaluations and reduce the number of complaints. One is the stabilizing influence of the observer evaluators. Increasingly, OEs are involved as direct contributors to the summative ratings. To the extent they interact with principals and assistant principals in making these ratings, professional judgment overall is enhanced. Because of their recent experience

as classroom teachers and their full-time assignment as evaluators, they soon become the greatest source of expertise on teacher evaluation in a school district. Their visits to many schools and classrooms give them the background experience and independence of judgment to question administrators about seemingly unjustified ratings and to help achieve consensus ratings of teacher performance. During this past year, making summative ratings by consensus became standard practice in the pilot districts. As principals came to accept OEs as full partners in the process, the quality of summative ratings improved immensely. The need for appeals should decline as well.

Another major development is the production of good training materials by the Department of Public Instruction. Part of the reason for so little training of school board members in particular was the lack of training materials. The videotape and supporting materials published in May, 1988, now provide clear directives about the roles of those involved in appeals hearings, the grounds on which appeals can be made, and a host of other specific guidelines for the conduct of hearings.

It is imperative that persons involved in the appeals process be well trained for that task. Materials are now available for that to happen. One of the biggest threats

to the career development program at this time and the performance appraisal system that undergirds it is the lack of (a) specific knowledge by school board members of the performance appraisal system and (b) direction and procedures for school board hearings of those who were denied career status.

My major recommendation is that school boards develop, in conjunction with the State Board of Education, agreements about procedures to be followed, criteria to be used, evidence to be considered and evidence that is irrelevant and not to be considered in the appeals process. I hope that school boards will agree to guidelines similar to those used by peer panels, so their review will bring lay persons' judgments to bear on essentially that same data that professional educators have considered. To do otherwise only increases ambiguity and inconsistency in the whole process; and potentially it could destroy the validity of the system.

All who are involved in the review process ought to be trained not only in the appeals procedure but in the performance appraisal instruments as well. With the recent availability of good training materials, the School Boards Association ought to establish regular and ongoing training clinics for those who are involved. Consideration might also be given by local boards to delegate the hearing responsibility to two or more of its

members who agree to participate in the training, become informed about the process, and conduct the actual hearings on behalf of the board.

FINAL LEGAL CONCERNS

Two underlying issues of a legal nature complicate my recommendations. Both suggest caution in what I propose and a need for authoritative legal opinion at the very least.

First, a core issue underlying the entire program is whether evaluatees have a full property right in a promotion or only a property interest. A promotion with pay raise is at stake, not one's job. Those who designed the appeals process and most attorneys, board members, and superintendents I talked with believe that the appeals process does not involve a property right and that full due process as a court of law might provide is not appropriate. The denial of a promotion is not the same as the loss of a job by a tenured teacher. A statement in statute 115C-363 indicates that "an involuntary reclassification may not be considered a demotion" from the tenured teacher ranks. Therefore, it would seem that the greater the similarity of school board and peer panel hearings in procedure and criteria, the greater the consistency and integrity of the appeals process.

Second, various means were suggested to alleviate stress for panelists caused by overlapping personal relationships in close communities and to prevent board politics from interfering with the appeals process. Outside arbitrators could provide the final hearing, if a

board so chose, or panels could come from other districts or a pool of trained board members from across the state. Communities could be given various alternatives regarding the composition of hearing panels if such variation does not run counter to the consistency-of-treatment principle that a statewide personnel system requires. What works well in some communities may not work so well in others. I would recommend providing alternatives if legal authorities feel the equal treatment principle would not be compromised.